

IN THE

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Big Sespe Oil Company, a Corpora-
tion,

Appellant,

vs.

William H. Cochran, a Citizen of the
State of New York, and William H.
Cochran, as Trustee for Pacific
Crude Oil Company,

Appellees.

Answer of Appellees to Petition for Rehearing of Appeal.

THEODORE MARTIN,

Solicitor for Appellees.

WM. H. COCHRAN,

Of Counsel.

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F. D. MONCKTON,

No. 3666

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*To the Honorable the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:*

The above named appellees, William H. Cochran and William H. Cochran as trustee for Pacific Crude Oil Company, availing themselves of the privilege so graciously accorded to them by your Honorable Court, make and respectfully submit this as their answer to

the appellant's petition for a rehearing of its appeal in the above entitled cause, and they also say as follows: follows:

Appellant's petition confines and limits its sought-for rehearing to the reconsideration of your Honorable Court, of "two certain points." (Petition, p. 4.)

Summarily stated, these two points are:

1. That the assignee of the judgment debtor's mere right of redemption cannot make or enforce such redemption, for to permit him so to do would "enlarge the classes of persons who may redeem from execution sale beyond the terms of the statute and the decisions of the California state courts." (Petition, p. 4.)

2. The asserted incorrectness of "the theory upon which the amount of recovery is ascertained" by the final decree appealed from, and as affirmed by your Honorable Court. (Petition, p. 9.)

To these two points and to each of them, appellees make answer as follows:

FIRST: Each and both of these points was fully presented and argued by appellant's counsel in their brief on this appeal. (Appellant's Brief, pp. 66-69, and pp. 52-61.)

These two several points were also fully presented and argued by appellees. (Appellees' Brief, pp. 99-106, and pp. 129-140.)

These two several points are also fully presented, ably discussed and decided by your Honorable Court

in its filed opinion on this appeal. (Opinion, pp. 15, 16 and 19.)

Appellant's petition for a rehearing is devoid of any facts, authorities or argument that were not presented in its filed brief on this appeal and which have not been already considered and passed upon by your Honorable Court in your filed opinion.

SECOND: Appellees refrain from making answer to the insidious statement or suggestion in appellant's petition (p. 4) that it "has escaped the attention of this Honorable Court" that Cochran is suing in his own right, and not by or on behalf of his assignor, the judgment debtor.

The opinion which has been filed clearly shows in several different places, and in express language, that your Honorable Court fully and correctly recognized and stated Cochran's claims and rights in this suit. How, therefore, can appellant really "feel" that such claims and rights may have "escaped the attention of this Honorable Court"?

THIRD: To permit the assignee of the judgment debtor's right of redemption, to redeem, does not enlarge the classes of persons who may redeem under the statute, in as much as the assignee is simply substituted for, and simply stands in the place and stead of the judgment debtor, and, by virtue of the assignment, becomes clothed with all the rights, powers and authorities of his assignor in the premises. The assignee, consequently, cannot be considered as any

additional class. He is but the substitute or representative of the judgment debtor.

FOURTH: To sustain appellant's contention that because the statute does not say in express language that the judgment debtor "or his assignee" may redeem, no enforceable assignment can be made of the judgment debtor's mere statutory right of redemption, would be to hold that no statutory right is enforceably assignable,, in as much as no statute specifically refers to the "assignee" of the party to whom any right is primarily given. Such enforceable right of assignment exists in all instances, "subject only to general laws." (California Civil Code, Sec. 679.) And there is no "general" or other laws qualifying or limiting the judgment debtor's "absolute ownership" of this right of redemption, or the judgment debtor's right to "dispose of it according to his pleasure." (California Civil Code, Sec. 679; see also, Appellees' Brief, pp. 104, 105.)

To sustain this contention of appellant would also be to refuse recognition of the provisions of the California Civil Code as to property in statutory rights, and assignable rights over property, which are so fully presented and ably discussed in your Honorable Court's opinion on this appeal, as to preclude the necessity of further presentation.

The fact that the statute gives the right of assignment, and clothes the judgment debtor's assignee with his assignor's full rights, powers and authorities in

the premises, fully explains the absence of decisions thereon. Appellant's contention that your Honorable Court's decision on this point is erroneous because there are no California decisions to directly and specifically support it, is hardly fair in as much as there are no such decisions either PRO or CON directly on the point. The right exists by statute, and is in no way dependent upon judicial decisions for its existence. Moreover, such decisions as have been cited, fully sustain by reasoning, analogy and principle the correctness of your Honorable Court's decision on this point.

The argument in appellant's petition that Cochran could not redeem because he was "devoid of any interest in the whole or any part of the property" (Petition, p. 5), is not only without merit, but is also based on any absolutely false assumption of fact.

This is exactly the same point as was presented in appellant's brief on this appeal (p. 66), when appellant argued that the judgment debtor's assignee was not entitled to redeem "unless he has an interest in the whole of the property, or some part thereof."

Appellant has always conceded, and it was likewise so determined by the trial court, and by your Honorable Court, that WILLIAM H. COCHRAN, PERSONALLY, HELD THE LEGAL TITLE TO THIS PROPERTY AT ALL THE TIMES INVOLVED IN THIS CAUSE. Cochran was not, therefore, devoid of any interest in this property, as suggested in appellant's petition. On the contrary, he was the owner and holder of the legal title to the property in question; and was entitled to, and was in

actual possession thereof until appellant's unlawful entry thereon.

FIFTH: Section 701 of the California Code of Civil Procedure, which provides for redemption by the "judgment debtor, or his successor in interest, in the whole or any part of the property," clearly establishes the propriety and correctness of your Honorable Court's decision that the right of redemption is a personal right, and does not run with the land. And because such right does not run with the land, the right of redemption is given by statute also to the purchaser of the land.

But it would be difficult to find any line of argument, let alone reasoning that would justify the finding that because the statute specifically gives a right of redemption also to the purchaser of the land, it was thereby inferentially intended to in any way limit or curtail the judgment debtor's legal and statutory rights, powers and authority over his property, *vis.*, the right of redemption and the sale and transfer thereof.

SIXTH: The assertions in appellant's petition of its theories of trespass, are most fallacious.

That appellant wilfully and unlawfully entered upon and took possession of this property, has been repeatedly found and determined by the learned district judge, the special master, and also by your Honorable Court. And appellant has never even attempted to

offer any justification or excuse for its wilful and illegal misconduct.

That trespass was committed against William H. Cochran, who was the owner and holder of the legal title to this property, and while he was in actual possession of the property. And it is that William H. Cochran who is prosecuting this suit.

SEVENTH: Appellant's inveighment against the rule of allowances, and its plea for more merciful consideration, are not entitled to any consideration. Appellant knowingly and wilfully committed trespass. The special master's "memorandum opinion" sufficiently elucidates this trespass and appellant's subsequent further wilful and outrageous attempts to unlawfully retain this property for itself. For such trespass there is but one rule of law. And such rule has been uniformly and always applied to appellant throughout the hearing and appeal of this cause. Appellant has but its own wilful and aggravated alleged misconduct to blame for the enforced application of the rule.

The statement in appellant's brief that this property "was not paid for in full" is untrue. The only moneys owing to appellant for this property were the \$15,000 which has been fully allowed and paid together with the statutory interest of one per cent (1%) per month thereon.

EIGHTH: Appellant's petition presents no grounds for a reconsideration of this appeal which have not

been already fully argued, and been passed upon by your Honorable Court.

To grant the sought-for rehearing would be to permit appellant to still longer continue his unlawful possession of this producing oil property, and to still longer unduly deprive complainant of the enjoyment of his adjudicated rights in the premises.

NINTH: Appellant's petition for a rehearing of this appeal should be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated November 7, 1921.

THEODORE MARTIN,

Solicitor for Appellees.

WM. H. COCHRAN,

Of Counsel.